IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2493 OF 2004

Rustom Irani & Anr. ...Petitioners.
Vs.
The Charity Commissioner & Ors. ...Respondents.

....

Mr. A.Y. Bookwala i/b. Mr. N.J. Ratnani for the Petitioners.
Mr. B.P. Colabawala i/b. Thakkar & co. for Respondent No.2, 3, 5, 6 and 8.
Ms. Saumya Srikrishna i/b. Kanga & Co. for Respondent No.9.
Mr. Chirag Balsara i/b. Ashwin Ankhad & Asso. For Respondent No.10.

.....

CORAM : DALVEER BHANDARI, C.J. &
DR.D.Y.CHANDRACHUD, J.

October 28, 2004.

P.C.:

An order passed by the Charity Commissioner, granting sanction under Section 36(1)(a) of the Bombay Public Trusts Act, 1950, is called into question in these proceedings. For the reasons which we proceed to enumerate, we have come to the conclusion that the petition does not represent a bona fide recourse to the jurisdiction of this Court under Article 226 of the Constitution. On merits as well, we hold that no case has been made out for interference.

2. The property in question, bears Cadestral Survey No.2/659, admeasures 2769.53 sq.mtrs. and is situated at Tardeo, Mumbai. The property stood in the name of the Second Respondent, a public charitable trust registered under the Bombay Public Trusts Act, 1950. The Trust was founded under an Indenture of Trust executed on 26th September 1935 by Navajbai Nowroji Gamadia to facilitate the object of providing residential accommodation to persons belonging to the Parsi Zorastrian Community. On 4th January 1972, by a registered deed of assignment the land was leased out by the Trust for 98 years on a monthly rent of Rs.27,000/- to Neelkamal Exhibitors. The Trustees instituted a suit for eviction in 1974 claiming inter alia that the lessee had not paid rent regularly and had sublet the land. The suit was dismissed by the Trial Court and an appeal was dismissed by the Appellate Bench of the Court of Small Causes. A Writ Petition filed by the Trust in 1998 has been admitted and is pending before this Court. The standard rent has been fixed at Rs.10,000/- per month.

3. The Trust moved an application before the Charity

Commissioner, for his sanction to the proposed alienation of the property in favour of the Ninth Respondent on an “as is where is basis” at and for a consideration of Rs. 1.25 crores. The Trust supported its proposal for alienation on the ground that the property has been involved in litigation and that even under the terms of the lease, a period of 60 years is still to elapse before the Trust is entitled to the return of the property. The Trustees, it was contended, had no funds to fulfill the objects of the Trust and the Trust would have to pursue the existing litigation in which, as already noted earlier, it had failed to establish a case for eviction before the Trial Court and before the Appellate Court. The Report of a Government approved valuer was relied upon wherein the value of the property had been assessed at Rs. 40.50 lakhs.

4. The Charity Commissioner, granted his sanction by an order dated 20th December 2001. In his order, the Charity Commissioner, noted that the property had been leased out on 4th January 1972 and that the suit for eviction which was filed by the Trust was dismissed by the Trial Court, which decree was affirmed in appeal. The Charity Commissioner, has taken note of the fact that a Writ Petition is pending in this Court since 1998. The Charity

Commissioner has noted that the standard rent has been fixed at Rs.10,000/- per month. The impugned order notes that the sale is of the reversionary rights of the Trust and that even out of the original term of the lease of 98 years, a period of 60 years is still to elapse. The property being involved in litigation, there was no definite prospect of the Trust receiving possession in the near future. The Charity Commissioner held that if the amount of Rs. 1.25 crores is received in lump sum, the Trust could be able to fulfill the objects of making available residential accommodation to persons belonging to the Parsi community and to maintain a Technical School which has been conducted by the Trust. On these grounds, the proposal has been sanctioned.

5. The order of the Charity Commissioner, under Section 36(1)(a) of the Act, was passed on 20th December 2001. The Petitioners claim to be the beneficiaries of the Trust in their capacity as persons professing the Zorastrian faith. The Writ Petition has been instituted before this Court on 25th August 2004 nearly 3 years after the alienation was sanctioned. There is no valid explanation for the delay. In the mean time, in pursuance of the permission granted by the Charity Commissioner, the Trustees

moved the Appropriate Authority under Chapter XX-C of the Income Tax Act, 1961. The Appropriate Authority granted a certificate under Section 269UL(3) of the Income Tax Act, 1961 on 4th July 2002. In pursuance thereof, a Deed of Conveyance has been executed on 28th January 2003. The Competent Authority under the Bombay Stamp Act, 1958 is stated to have duly assessed the property to stamp duty on 27th February 2003. The conveyance has been registered on 21st October 2003.

6. On behalf of the Trust and the purchaser, the Ninth Respondent, it has been submitted that the petition is clearly not a bona fide recourse to the jurisdiction of this Court and has been instituted at the behest of the Tenth Respondent. In ground (B) of the Petition in paragraph 6, it has been alleged that the Tenth Respondent had informed the Petitioners that during the course of negotiations, he had made an offer of Rs. 1.35 crores for purchasing the reversionary rights. The Trust has submitted before the Court that the lease in favour of the Tenth Respondent was terminated on 7th July 2004. On 16th September 2004 a letter was addressed by the Tenth Respondent challenging the conveyance which was executed by the Trust in favour of the Ninth

Respondent.

7. We find a considerable degree of merit in the submission of the Trust. The Petitioners stood by and waited for the proceedings before the Charity Commissioner, to come to an end and it is only after the conveyance was registered, after the due receipt of the sanction from all the concerned authorities, that the petition has been filed. The petition has been filed nearly a year after the registration of conveyance, and almost three years after the order of the Charity Commissioner.

8. Be that as it may, we have also considered the submission of the Petitioners that the sale ought to be set aside on the ground that no public notice had been issued. We have considered the question of valuation, particularly having regard to the fact that no public notice was issued. We decline to accede to the submission for several reasons. Firstly, the Appropriate Authority under Chapter XX-C of the Income Tax Act, 1961 has granted its permission. The certificate under Section 269UL(3) is in our view, one indication of the fact that the consideration has not been undervalued. Secondly, the competent authority under the

Bombay Stamps Act, 1958, has also not found that the consideration which was stated in the agreement was undervalued. The property has been assessed to stamp duty and it is common ground that the assessment is carried out on the basis of the market value reflected in the reckoner maintained by the Authorities under the Stamp Act. Thirdly, we called upon Counsel appearing for the Petitioners as well as the Tenth Respondent to state before the Court as to what price the Tenth Respondent would be ready to offer. Counsel appearing for the Tenth Respondent states that the Tenth Respondent would be willing to offer a price of Rs. 1.50 crores at this point of time. The offer is, in our view, sufficient to negate the submission urged in the petition. The Memorandum of Understanding between the parties was entered into on 24th September 2001 and the Charity Commissioner, granted his permission in December 2001. The consideration which is offered by the Tenth Respondent after the lapse of three years of the order of the sanction of the Charity Commissioner, is certainly not of a nature that would indicate that the price which has been negotiated by the Trustees in the year 2001 is in any manner undervalued.

9. In the circumstances, we find no reason to exercise our jurisdiction under Article 226 of the Constitution. The Petition is accordingly dismissed.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.